

HIGH COURT FORM NO.(J) 3
HEADING OF JUDGMENT ON APPEAL

District:- Nalbari

IN THE COURT OF THE DISTRICT JUDGE :: NALBARI.

Present:- *Smti S. Bhuyan, A.J.S.*
District Judge, Nalbari

Tuesday, the 12th day of January, 2021.

Money Appeal No. 2/2013

from the judgment and decree of **learned Civil Judge, Nalbari** dated **07/12/2012** made in **Money Suit No. 01/2011**.

North Eastern Development Finance Corporation Ltd., represented by Smti. Olee Bora, Deputy General Manager (MSE & MF) Deptt. NEDFi House, GS Road, Dispur, Guwahati – 6, Assam Appellant.

- Versus -

1. M/S Gramya Swaniojan Parishad

Represented by its President & Secretary

2. Md Chattar Ali Khan

President & Guarantor

M/S. Gramya Swaniojan parishad

S/O-Md Nazir Ali

Vill- Niz Khagta, P.O.-Ghograpar

District- Nalbari.

3. Md Taiab Ali

Secretary & Guarantor

M/S- Gramya Swaniojan Parishad

S/O-Late Faijur Rahman

Vill-Barjabarihati, P.O.-Dakshingaon

District- Nalbari

..... Respondents.

This appeal is coming on for final hearing on 14/12/2020 in the presence of:-

Mr. D. N. Deka Advocate for the appellant

and

None appeared Advocate for Respondent.

and having stood for consideration to this day the Court delivered the following judgment :-

JUDGMENT

1. This appeal has been directed against the Judgment and Decree dated 07/12/2012 passed by learned Civil Judge, Nalbari in M.S. Case No- 01/2011.

2. Being highly aggrieved and highly dissatisfied with the aforesaid Judgment and Decree, plaintiff as appellant preferred the appeal on the following ground:- that the learned trial Court erred both in law and facts in passing the impugned Judgment and Decree; misread and misconceived the pleadings as well as the entire evidence on record and thereby coming to a wrong decision; learned trial Court made contradictory discussion in partly decreeing of the suit against appellant and therefore the Judgment and Decree passed by learned trial Court is liable to be set aside.

3. It has been argued by learned appellant counsel that trial court failed to appreciate the evidence on record in the right manner and Article 18 of the Limitation Act applicable in this case and the suit is not barred by limitation u/s- 36 of the Limitation Act.

4. None appeared for the respondent side and no written argument have been submitted by the learned counsel for the respondent within the stipulated time given.

5. Learned trial court vide impugned judgment and order dated 07/12/2012 passed in M.S. Case No. 1/11 hold that defendant borrowed a loan amount of two lakhs from the plaintiff by entering into an agreement and the defendants have defaulted in making the payment as per terms and conditions of the agreement and hold suit of the plaintiff is barred by limitation and dismissed on contest with cost.

6. In this appeal the main point for determination are:

- i. Whether the suit is barred by limitation and whether Ext-16 covered the provision of section 18 of the Limitation Act and suit is filed within the limitation period and plaintiff entitled for a decree?

7. The plaintiff before the trial court adduce evidence both oral as well as documentary to establish the case and defendant adduce his evidence to establish his plea. I have gone through the evidence on record.

8. PW-1 Smti Olee Bora, Deputy General manager (MSE) Department, North Eastern Development Finance Corporation deposed that defendant No. 3 approached the plaintiff's financial institution for term loan of Rs. 2,00,000/- under Micro Finance Scheme and defendant No. 3 agreed to execute the required documents in favour of the plaintiff for obtaining the loan amount for defendant No. 1 and plaintiff sanctioned a loan of Rs. 2,00,000/- on 21/07/05 to defendants and after execution of loan agreement, deed of hypothecation and promissory notes, the loan amount was disbursed in favour of defendant. She further contended that defendant failed to comply the terms and conditions of the loan agreement and plaintiff on several occasion sent demand notice to defendant for repayment of loan and on 16/02/06, 20/06/06, 15/09/06, 17/11/06, 18/12/06, 19/01/09 and 05/02/09 and on 24/08/10 plaintiff served show cause notice to defendant for repayment of loan.

9. DW-1 Taiyab Ali as Secretary of Gamyā Swaniyojan Parishad stated that plaintiff being a financial corporation approached the defendant for loan and a

loan of Rs. 2,00,000/- was disbursed on 17/08/05. He further stated that defendant being poor rural organization failed to repay the loan amount intimated the plaintiff to waive the loan with interest. He denied receiving of any demand notice from plaintiff. DW-1 again stated that since date of disbursement of loan amount plaintiff have not made any correspondence towards repayment of the loan i.e. since 17/08/05 and filed the suit on 28/02/11 which is time barred.

10. Learned trial court holds that suit is barred by limitation and Ext-16 is not an acknowledgment made by the defendants and accordingly dismissed the suit of appellant plaintiff.

11. On scrutiny of trial court record it is seen that defendant vide letter dated 23/05/06 (Ext-16) acknowledged the loan amount. Defendant applied for loan in the year 2005 and loan was granted vide Ext-6. First installments of loan was disbursed on 23/08/05 vide Ext-7 and second installments was disbursed on 04/01/06 vide Ext-8. Record further revealed that plaintiff issued demand notice vide Ext-9, 10, 11, 12, 13 and 14 and issued show cause notice to defendant vide Ext-15.

12. Section 18 of the Limitation Act says: "18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

13. Section 36 of the Limitation Act says: "where a bond stipulates that the principal amount thereunder would be paid back within a fixed period (e.g. 18 years) and the entire principal amount is divided into installments payable annually and provision is also made for payment of interest, the bond is one payable by installments, and as the bond contains no stipulation that if default be made in payment of one installment, the whole sum shall be due, the case is governed by Article 36, and not by Article 37; the cause of action in respect of each installment in default would arise on the date of the default. Consequently, the plaintiff can recover only those installments which fell due within three years before suit.

It is, therefore, clear that this Article relates to suits on promissory notes or bonds payable by installment where there is no default clause. Time runs from the expiry of the first term of payment as to the part then payable. Thus this Article recognizes the principle of different causes of action arising in an installment as and when the installments fall due."

The limitation period under article 36 of the Limitation Act is 3 years. The suit is filed on 15/03/11 that is beyond the limitation period.

14. If Ext-16 dated 23/05/06 is regarded as the acknowledgment of debt and if limitation period is extended from 23/05/06, the limitation to file the suit is over on 22/05/09. Plaintiff filed the suit on 15/03/11. Before expiry of the limitation period from 23/05/06, there is nothing available on record that

defendant acknowledged the debt and therefore, Ext-16 does not comply the provision of section 18 of the Limitation Act and the suit is barred by limitation u/s-36 of the Limitation Act.

15. The preponderance of evidence is in favour of the defendant and when plaintiff failed to proof due execution of Ext-16 upon the defendant and Ext-16 does not cover the limitation, he does not entitle for the relief as claimed for. Accordingly, the point for determination is decided in negative against the appellant.

16. In the result I hold that appellant is not entitled for decree and the appeal is dismissed. Judgment and order and decree passed by the learned trial court in M.S. Case no: 1/11 is hereby upheld. Parties to bear their own cost.

17. Prepare decree accordingly within statutory period of time.

18. Send trial court record with a copy of judgment and decree to the learned trial court.

Judgment delivered under hand and seal of this court on this 12th day of January, 2021 at Nalbari, District-Nalbari.

(Smti S. Bhuyan)
District Judge, Nalbari

Dictated & corrected by me

(Smti S. Bhuyan)
District Judge, Nalbari.

Typed by
Biswajit Bhattacharjya
U.D.Asstt.